HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 1589 Numeric Nutrient Water Quality Standards
SPONSOR(S): Legg
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	General Government Policy Council		Kliner	Hamby
2)	Rules & Calendar Council			
3)				
4)				
5)				

SUMMARY ANALYSIS

The House Memorial urges the United States Congress to reject the numeric nutrient water quality standards adopted by the United States Environmental Protection Agency.

The House Memorial does not amend, create, or repeal any provisions of the Florida Statutes.

The House Memorial has no fiscal impact on state or local government.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Pursuant to section 303(d) of the Clean Water Act (CWA), Florida's Department of Environmental Protection (DEP) must submit lists of surface waters that do not meet applicable water quality standards, and must establish total maximum daily loads (TMDLs) for these "impaired waters" on a prioritized schedule. A TMDL is the maximum amount of a given pollutant that a water body can absorb and still maintain its designated uses (e.g., drinking, fishing, swimming, shellfish harvesting). One water body may have several TMDLs, one for each pollutant that exceeds the water body's capacity to absorb it safely.

The state's impaired waters rule contains a table that catalogues over 100 substances, including subparts, with numerical thresholds for surface water classifications, including fresh and marine waters. For nutrients (phosphorus and nitrates), however, Florida currently uses a narrative standard rather than numerical threshold to guide the management and protection of its waters. This standard states that "in no case shall nutrient concentrations of a body of water be altered so as to cause an imbalance in natural populations of flora or fauna."

The DEP has relied on this narrative standard for many years because nutrients are unlike any other "pollutant" regulated by the CWA. Most water quality criteria are based on a toxicity threshold, evidenced by a dose-response relationship, where higher concentrations can be demonstrated to be harmful, and safe concentrations can be established at a level below which adverse responses are evident. In contrast, nutrients are present naturally in aquatic systems, and they are absolutely necessary for the proper functioning of biological communities. In addition, nutrients are sometimes moderated in their expression by many natural factors (e.g., water color, rate of flow, sunlight, shade, animal activity). The DEP's preferred approach is to develop cause/effect relationships between nutrients and valued ecological attributes, and to establish nutrient criteria that ensure that the designated uses of Florida's waters are maintained.

In 2001, the DEP began work developing numeric nutrient criteria. Since then, it has adopted 135 nutrient TMDLs with an additional 39 pending approval. The determination of a federal lawsuit may alter dramatically the ability of the DEP to regulate the state's surface waters and may undo all that the DEP has accomplished to date.

In August, 2008, the Environmental Protection Agency (EPA) was sued by five environmental groups (the Florida Wildlife Federation, Sierra Club, Conservancy of Southwest Florida, Environmental

Confederation of Southwest Florida, and St. Johns Riverkeeper), alleging failure on the part of the federal agency to comply with the CWA. These groups asserted that Florida was not meeting water quality standards for nutrients due to the DEP's narrative criteria. The DEP is not a party to the lawsuit, however, several groups representing utilities, local governments, and agriculture in the state intervened.

On January 14, 2009, the EPA placed the DEP on formal notice that numerical criteria for nutrients were necessary for compliance with the CWA. This notice triggered a deadline of one year for the EPA to develop numeric nutrient criteria for Florida's surface waters and 24 months to develop numeric criteria for coastal waters. In the ensuing eight months, DEP staff worked overtime to develop a numeric criteria that would appease the EPA. On August 19, 2009, the EPA entered into a consent decree to settle a lawsuit filed by the five environmental groups. The EPA committed to propose numeric nutrient standards for lakes and flowing waters in Florida by January 2010, and for Florida's estuarine and coastal waters by January 2011. EPA agreed to establish final standards by October 2010 for lakes and flowing waters and by October 2011 for estuarine and coastal waters.

On January 14, 2010, EPA Administrator Lisa Jackson signed a proposed rule called "Water Quality Standards for the State of Florida's Lakes and Flowing Waters." This rule was published in the Federal Register on January 26, 2010. The rule proposes "numeric water quality criteria" pertaining to nutrient concentrations to protect aquatic life in lakes and flowing waters, including canals, within the state of Florida. In addition, EPA is proposing regulations to help Florida develop "restoration standards" for impaired waters.

The rule is expected to affect everyone in the state, including industries discharging pollutants to lakes and flowing waters, publicly-owned water treatment facilities, entities responsible for managing stormwater runoff, and all non-point source contributors to nutrient pollution (e.g., agricultural production, managed landscapes, and urban areas).

Since these rules have only been proposed at this point, it is difficult to say exactly how the future day-to-day activities of Florida's residents, land and water resource managers, businesses, and utilities will be affected. In the case of wastewater disposal systems like sewage treatment plants and septic tanks, there is technology that may further reduce nutrients from these sources. For other sources of pollution, the answers are not as clear. A study commissioned by the Florida Water Environment Association Utility Council estimates that wastewater utilities in the state will spend between $24 billion and $51 billion in capital costs for additional wastewater treatment facilities and incur increases in annual operating costs between $4 million and $1 billion to comply with the proposed federal numeric nutrient criteria.

Effect of Proposed Changes

The House Memorial urges the United States Congress to reject the numeric nutrient water quality standards adopted by the United States Environmental Protection Agency.

The memorial specifies that the standards proposed by the United States Environmental Protection Agency are arbitrary, unfair to Florida and its citizens, and are potentially crippling to the state's fragile economy.

Copies of the memorial are to be provided to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

In support of the memorial, HM 1589 provides the following whereas clauses:

- WHEREAS, the United States Environmental Protection Agency has adopted new and highly restrictive numeric nutrient water quality standards for all inland water bodies in Florida, and
- WHEREAS, the imposition of such standards would derail the state's well-established and effective Total Maximum Daily Loads Program, and

- WHEREAS, Florida has served as a national role model for water management and environmental restoration through such efforts as the Comprehensive Everglades Restoration Plan, and
- WHEREAS, the state is responsible for more than one-third of all the nutrient-related water quality samples in the national water quality database, and
- WHEREAS, despite its national leadership in water quality improvement, Florida is the only state targeted by the Environmental Protection Agency for the imposition of federal water standards, and
- WHEREAS, the new standards would have a price tag that could devastate the state's fragile economy, and
- WHEREAS, according to a report by the Environmental Protection Agency's Inspector General, the cost of implementing the new standards will primarily be borne by individuals and businesses, and
- WHEREAS, the consumers of the state cannot afford the potential doubling of their water bills, especially in these uncertain economic times, and
- WHEREAS, the businesses in the state would be subjected to unfair cost disadvantages that competitors do not face.

B. SECTION DIRECTORY:

Not applicable as a memorial does not have sections.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable as memorial does not amend, create, or repeal any provisions of the Florida Statutes.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES